

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

EVERGLORY COMPANY,

Plaintiff,

-against-

**COMPLAINT**

07 Civ. 9361

SHAW CREATIONS, INC.,

Defendant.

---

Plaintiff, as and for its Complaint against the defendant, alleges that:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is a business corporation organized and existing under the laws of the People's Republic of China and maintains its principal place of business in Hong Kong, China.

2. Defendant is a business corporation organized and existing under the laws of the State of New York and maintains its principal office in the State and County of New York.

3. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(2) because this is an action between a citizen of a foreign state and a citizen of a State where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because the defendant resides in this judicial district, as defined in 28 U.S.C. § 1391(c).

**ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

5. Defendant is a manufacturer of umbrellas and related products.
6. Plaintiff is an importer and distributor of umbrellas and related products.
7. Defendant placed orders with plaintiff for the purchase of various goods at agreed-upon prices.
8. The goods ordered from plaintiff by defendant were delivered to defendant.
9. The goods were accepted and retained by defendant without objection.
10. Invoices for each order were sent to and received by defendant.
11. The invoices, copies of which are attached hereto and incorporated by reference, are:

<b>Invoice Number</b>	<b>Date</b>	<b>Amount (USD)</b>
EG531-S22	07/16/06	\$12,419.00
EG537-S24	07/20/06	\$54,300.00
EG539-S25	07/31/06	\$32,568.00
EO541-S26	08/10/06	\$ 6,750.00
EG546-S29	08/27/06	\$16,720.00
EG549-S30	08/21/06	\$3,500.00
EG557-S31	09/21/06	\$42,228.00
EG561-S32	10/05/06	\$13,500.00
EG562-S33	11/26/06	\$1,326.00
EG564-S34	10/12/06	\$6,750.00
EG584-S39	12/17/06	\$52,820.00
EG592-S40	01/07/07	\$13,950.00
EG596-S41	02/04/07	\$11,880.00
EG602-S42	03/12/07	\$13,440.00
EG605-S43	04/02/07	\$52,292.00

**TOTAL: \$334,443.00**

12. Defendant has failed to remit payment in full for the goods sold and delivered.

13. There is a balance due and owing plaintiff of \$334,443.00, plus interest thereon.

**FIRST CLAIM FOR RELIEF**

*(Account Stated)*

14. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 13 above with the same force and effect as if set forth in full herein.

15. On or about June 14, 2007, plaintiff transmitted to defendant additional copies of each of the invoices attached hereto and a statement of defendant's account, reflecting a balance of \$334,443.00.

16. Defendant received and retained the statement of its account without objection, thereby assenting to its accuracy.

17. By virtue of the foregoing, defendant is liable to plaintiff on an account stated for \$334,443.00, plus interest thereon.

**SECOND CLAIM FOR RELIEF**

*(Breach of Contract)*

18. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 17 above with the same force and effect as if set forth in full herein.

19. Defendant has breached its contractual obligations to pay for the goods sold and delivered to it by plaintiff.

20. By virtue of the foregoing, plaintiff is entitled to judgment against the defendant for breach of contract in the amount of \$334,443.00, plus interest thereon.

**THIRD CLAIM FOR RELIEF**

*(Reasonable Value - Goods Sold and Delivered)*

21. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 20 above with the same force and effect as if set forth in full herein.

22. In the alternative, defendant has been unjustly enriched and plaintiff therefore is entitled to a recovery of the reasonable value of the goods, which is not less than \$334,443.00, plus interest thereon.

WHEREFORE, plaintiff demands judgment against the defendant for \$334,443.00, plus interest, attorney's fees, the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 18, 2007

LAW OFFICES OF  
BERNARD D'ORAZIO, P.C.

s/Bernard D'Orazio

By: \_\_\_\_\_  
Bernard D'Orazio (BD2494)  
Attorneys for Plaintiff  
100 Lafayette Street-Suite 601  
New York, New York 10013-4400  
(212) 608-5300